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A BILL
23-214

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To provide an annual payment to eligible providers of direct services to individuals with intellectual and developmental disabilities for the purpose of ensuring direct support professionals a living wage, to require the Director of the Department of Health Care Finance and the Director of the Department on Disability Services to determine the amount of the annual payment, and to establish eligibility criterion for a provider to receive the annual payment.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Direct Support Professional Payment Rate Act of 2019”.

Sec. 2. Definitions.

For the purpose of this act, the term:

(1) “Developmental disability” shall have the same meaning as provided in section 102(8) of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, approved October 30, 2000 (114 Stat. 1682; 42 U.S.C. § 15002).

(2) “Direct services” means residential, in-home, day, or support services, including employment and community development services, under the District’s Medicaid Home and Community-Based Services Waiver for Persons with Intellectual and Developmental Disabilities program as authorized by section 1915(c) of the Social Security Act, approved

28 August 13, 1981 (95 Stat. 809; 42 U.S.C. § 1396n(c)) or the Intermediate Care Facilities for
29 Individuals with Intellectual Disabilities program as authorized by section 1905(d) of the Social
30 Security Act, approved December 28, 1971 (85 Stat. 809; 42 U.S.C. § 1396d(d)).

31 (3) “Direct support professional” means an employee of a service provider who
32 provides direct services to individuals with developmental disabilities for at least 50% percent of
33 the employee’s work hours.

34 (4) “Service provider” means an entity that provides direct services to individuals
35 with developmental disabilities.

36 Sec. 3. Payment.

37 On an annual basis, the Mayor shall disburse to each eligible service provider an amount
38 as determined annually by section 4 that the eligible service provider shall then distribute in its
39 entirety to its direct support professionals.

40 Sec. 4. Calculating the annual payment.

41 (a)(1) The Director of the Department of Health Care Finance (“DHCF”) and the Director
42 of the Department on Disability Services (“DDS”) shall, by October 1 of each year, submit a
43 written joint determination on the total payment amount to be provided to eligible service
44 providers for the upcoming year pursuant to section 3 to the Mayor and the Council.

45 (2) The total payment amount shall equal the greater of either 117.6% of the
46 District minimum wage pursuant to section 4 of the Minimum Wage Act Revision Act of 1992,
47 effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1003) (“Minimum Wage

48 Act”), or 117.6% of the District living wage pursuant to the Living Wage Act of 2006, effective
49 June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.01 *et seq.*) (“Living Wage Act”).

50

51 (b) In determining the total annual payment amount to be provided to eligible service
52 providers, DHCF’s and DDS’s written joint determination shall expressly consider the following
53 criterion:

54 (1) The District reimbursement rates to service providers under the District’s
55 Medicaid Home and Community-Based Services Waiver for Persons with Intellectual and
56 Developmental Disabilities program and the Intermediate Care Facilities for Individuals with
57 Intellectual Disabilities program;

58 (2) The total cost that service providers in the previous year incurred in providing
59 direct services, including wages; and

60 (3) The additional operating support that service providers need to allow each
61 service provider to pay its direct support professionals, on average, the greater of either 117.6%
62 of the District minimum wage pursuant to the Minimum Wage Act, or 117.6% of the District
63 living wage pursuant to the Living Wage Act.

64 (c) It shall not be a violation of this act for service providers to pay individual direct
65 support professionals more or less than 117.6% of the District living wage or the District
66 minimum wage if the service providers create a tiered compensation schedule that considers the

67 direct support professional's qualified experience in the field and their demonstrated
68 competency.

69 Sec. 5. Eligibility for payment.

70 (a) To qualify for payment pursuant to section 3, a service provider shall meet eligibility
71 requirements established by rules issued pursuant to section 6.

72 (b) Each year subsequent to the first year of payment, a service provider that received
73 payment pursuant to section 3 the prior year shall demonstrate to DHCF that it paid its direct
74 support professionals the proscribed hourly rate for that year as determined by section 4 in the
75 service provider's operating budget cycle, inclusive of overtime wages and bonuses, to remain
76 eligible for payment the current.

77 Sec. 6. Rules.

78 The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act,
79 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules
80 to implement the provisions of this act, including rules relating to enforcement of this act and
81 relating to fines and penalties schedule for failure to comply with any provision of this act.

82 Sec. 7. Applicability.

83 (a) This act shall apply upon the date of inclusion of its fiscal effect in an approved
84 budget and financial plan.

85 (b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in
86 an approved budget and financial plan, and provide notice to the Budget Director of the Council
87 of the certification.

88 (c)(1) The Budget Director shall cause the notice of the certification to be published in
89 the District of Columbia Register.

90 (2) The date of publication of the notice of the certification shall not affect the
91 applicability of this act.

92 Sec. 8. Fiscal impact statement.

93 The Council adopts the fiscal impact statement in the committee report as the fiscal
94 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
95 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

96

97 Sec. 9. Effective date.

98 This act shall take effect after approval by the Mayor (or in the event of veto by the
99 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
100 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
101 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
102 Columbia Register.